Bismillaahir Rahmaanir Raheem

The Islamic Laws of Inheritance

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This article gives an overview of the Islamic laws of inheritance with the aim of increasing the awareness of the Muslim community living in the west regarding this important aspect of Islamic law. The scope of this article is confined to traditional Sunni Islamic law.

When a Muslim dies there are four duties which need to be performed. These are:

1. **payment of funeral expenses**
2. **payment of his/her debts**
3. **execution his/her will**
4. **distribution of remaining estate amongst the heirs according to Sharia**

It is assumed that the preliminary issues have been resolved and we shall confine are ourselves principally to discussing the fourth and last duty. The task is to firstly, determine which of the relatives of the deceased are entitled to inherit and secondly, to determine the quantum share entitlement of each of the heirs concerned.

Needless to say Muslims must follow all the commandments of Allah (SWT) as Allah the Almighty says, "It is not for a believer, man or woman, when Allah and His Messenger have decreed a matter that they should have any opinion in their decision. And whoever disobeys Allah and His Messenger, has indeed strayed into a plain error." [Quran 33:36]

The particular importance of the Islamic laws of inheritance is obvious from the verses immediately following those verses giving specific details on inheritance shares, "These are limits (set by) Allah (or ordainments as regards laws of inheritance), and whosoever obeys Allah and His Messenger will be admitted to Gardens under which rivers flow (in Paradise), to abide therein, and that will be the great success.

"And whosoever disobeys Allah and His Messenger, and transgresses His limits, He will cast him into the Fire, to abide therein; and he shall have a disgraceful torment." [Quran 4:13-14]

The laws of inheritance take on an even greater prominence in Islam because of the restriction placed by Sharia on the testamentary power of the testator as we shall see later in this article.

The divine justness and equitability of the Islamic laws of inheritance have been correctly appreciated by many non-Muslim scholars such as Professor Almaric Rumsey (1825-1899) of King's College, London, the author of many works on the subject of the Muslim law of inheritance and a barrister-at-law, who stated that the Muslim law of inheritance, "comprises beyond question the most refined and elaborate system of rules for the devolution of property that is known to the civilised world.[1]"

To understand the Islamic laws of inheritance as a whole it is necessary to consider the system of inheritance that operated within the Arabian peninsula prior to the revelation of the Quranic injunctions on inheritance. Although we do not have the exact details of the system that operated prior to the Quranic revelations we do know that the system of inheritance was confined to the

male agnate relatives ("*asaba*") of the deceased. In this old customary system only the male agnates (*asaba*) were entitled to inherit. Amongst the male agnates there were rules of priority, which determined which of the surviving male agnates were entitled to inherit. It is likely that the rules of priority that operate amongst the *asaba* in Sharia are a carry-over of the old customary agnatic system. In Islamic law the son takes priority over the father who in turn takes priority over the brothers who in turn take priority over the paternal uncles.

As we shall see the Quran does not expressly state the share of the male agnate relatives as such, although it does enact that the share of the male is twice that of a female. The Sunni jurists take the view that the intention of the Quranic injunctions was not to completely replace the old customary agnatic system entirely but merely to modify it with the objective of improving the position of female relatives. The Sunni Islamic law of inheritance is therefore, an amalgamation of the Quranic law superimposed upon the old customary law to form a complete and cohesive system. The rights of the *asaba* were recognised by the Prophet Muhammad (SAWS) himself. Abdullah ibn Abbas (RA) reported that the Prophet Muhammad (SAWS) said, *"Give the Faraid (the shares of the inheritance that are prescribed in the Quran) to those who are entitled to receive it. Then whatever remains, should be given to the closest male relative of the deceased."* (Sahih al-Bukhari)

The Shia jurists on the contrary took the view that since the old agnatic customary system had not been endorsed by the Quran it must be rejected and completely replaced by the new Quranic law.

By specifying clear-cut entitlement and specific shares of female relatives, Islam not only elevated the position of women but simultaneously safeguarded their social and economic interests as long ago as 1400 years. The Quran contains only three verses [4:11, 4:12 and 4:176] which give specific details of inheritance shares. Using the information in these verses together with the traditions of the Prophet Muhammad (SAWS) as well as methods of juristic reasoning, the Muslims jurists have expounded the laws of inheritance in such meticulous detail that large volumes of work have been written on this subject.

"Allah commands you regarding your children. For the male a share equivalent to that of two females. " [Quran 4:11]

This first principle which the Quran lays down refers to males and females of equal degree and class. This means that a son inherits a share equivalent to that of two daughters, a full (germane) brother inherits twice as much as a full sister, a son's son inherits twice as much as a son's daughter and so on. This principle is however, not universally applicable as we shall see later in verse 4:12, the descendants of the mother notably the uterine brother and uterine sister inherit equally as do their descendants.

"If (there are) women (daughters) more than two, then for them two thirds of the inheritance; and if there is only one then it is half." [Quran 4:11]

Women in this context refers to daughters. The Quran gives the daughter a specific share. In legal terminology the daughter is referred to as a Quranic heir or sharer (*ashab al-faraid*). The Quran mentions nine such obligatory sharers as we shall see later. Muslims jurists have added a further three by the juristic method of *qiyas* (analogy). So in Islamic jurisprudence there are a total of twelve relations who inherit as sharers.

If there are any sons the share of the daughter(s) is no longer fixed because the share of the daughter is determined by the principle that a son inherits twice as much as a daughter. In the absence of any daughters this rule is applicable to agnatic granddaughters (son's daughters). The agnatic granddaughter has been made a Quranic heir (sharer) by Muslim jurists by analogy.

If there is only a single daughter or agantic granddaughter her share is a fixed one-half, if there are two or more daughters or agnatic granddaughters then their share is two-thirds. Two or more daughters will totally exclude any granddaughters. If there is one daughter and agnatic granddaughters, the daughter inherits one-half share and the agnatic granddaughters inherit the remaining one-sixth, making a total of two-thirds. If there are agnatic grandsons amongst the heirs then the principle that the male inherits a portion equivalent to that of two females applies.

"And for his parents for each of them there is one-sixth of the inheritance if he has a child, but if he does not have a child and the parents are the heirs then for the mother one-third." [Quran 4:11]

The Arabic word "*walad*" has been variously translated as child, son, children and offspring by translators. However, there is universal agreement amongst the Sunni Muslim jurists that "*walad*" here refers to any child or agnatic grandchild (grandchild through son).

If there is a child or agnatic grandchild amongst the heirs then each of the parents inherits one-sixth. In the absence of a child or agnatic grandchild the mother inherits one-third, the share of the father is not mentioned under these circumstances. The father in fact inherits as a residuary (a residuary heir gets whatever remains of the inheritance after the Quranic sharers have been allocated their shares, residuary heirs are generally male agnates) under these circumstances.

To these two Quranic heirs, the mother and the father, the maternal grandmother and paternal grandfather have been added by analogy. The maternal grandmother substitutes the mother in the latter's absence.

"... but if he has brothers (or sisters) then for the mother one-sixth" [Quran 4:11]

The consensus of opinion is that the word "*akhwatun*" used in the Quranic text means two or more brothers or sisters of any kind. So that any combination of full, consanguine or uterine brothers and sisters, if two or more will mean that the mother inherits a one-sixth share.

"And for you there is one-half of what your wives leave behind if there is no child, but if they leave a child then for you there is one-fourth of what they leave behind; ... " [Quran 4:12]

Again according to Islamic law the word "*walad*" here is interpreted as child or agnatic grandchild. The husband, another Quranic heir, inherits one-half in the absence of a child or agnatic grandchild and one-quarter in the presence of a child or agnatic grandchild.

"And for them one-fourth of what you leave behind if you did not have a child, but if you have a child then for them one-eighth of what you leave behind; ..." [Quran 4:12]

This statement gives us the ruling on the share of the wife (widow). The share of the wife is one-quarter in the absence of a child or agnatic grandchild and one-eighth in the presence of a child or agnatic grandchild. Two or more wives share equally in this prescribed share.

Before continuing with the translation of verse 4:12 let us consider a situation where a woman dies leaving behind a husband and both parents as the only heirs.

The husband inherits one-half of the estate, there is no argument on this point. However, if we give the mother a one-third share then the father is left with only one-sixth. Should the male (father) not get twice the share of the female (mother) of equal degree and class?

This problem arose during the caliphate of Umar ibn Khattab (RA). After consultation with the

learned companions the majority opinion was that the father should get twice the share of the mother, that is to say, the principle that the male inherits the share of two females is upheld. The father therefore, inherits one-third and the mother one-sixth

In light of this ruling the sentence of verse 4:11 on this matter which reads, "...but if he does not have a child and the parents are the heirs then for the mother one-third." is interpreted to mean, "...but if he does not have a child and the parents are the (only) heirs then for the mother one-third."

"And if a *kalala* man or woman (one who has neither ascendants nor descendants) is inherited from, and he (or she) has a (uterine) brother or (uterine) sister then for each of them (there is) one-sixth. But if they (uterine brothers and sisters) are more than that then they are sharers in one-third (equally)." [Quran 4:12]

The interpretation of the second half of verse 4:12 has been a source of controversy, one reason being the meaning of the word "*kalala*". This word "*kalala*" occurs only in two places in the Quran [4:12 and 4:176] and on both occasions regarding inheritance. "*Kalala*" may mean "one who leaves neither parent nor child" or "all those except the parent and child". It is generally taken to mean the former.

It is universally agreed that the siblings referred to in this verse are uterine siblings (those with the same mother but different fathers).

The uterine siblings only inherit in the absence of any descendants or ascendants. If there is only one uterine sibling he or she inherits a one-sixth share. If there are two or more uterine siblings they together inherit a one-third share equally.

The heirs mentioned in the Quran (mother, father, husband, widow, daughter, uterine brother, full sister, uterine sister, consanguine sister) together with the three heirs added by juristic method of analogy (paternal grandfather, maternal grandmother and agnatic granddaughter) form a group of heirs called Quranic heirs or sharers (*ashab al-furud*). These heirs when entitled to inherit are given their fixed shares and the remaining estate is inherited by the residuaries (*asaba*).

Under Islamic law some of the Quranic heirs, namely the father, paternal grandfather, daughter, agnatic granddaughter, full sister, consanguine sister and the mother, can also inherit as residuaries under certain circumstances.

Certain heirs referred to as primary heirs are always entitled to a share of the inheritance, they are never totally excluded. These primary heirs consist of the spouse relict, both parents, the son and the daughter. All remaining heirs can be totally excluded by the presence of other heirs. There are several rules of exclusion which determine the exclusion of some heirs by the presence of others. It not possible to discuss all these rules in an article of this nature but in brief :

1. **a person (e.g. brother) who is related to the deceased through another (i.e. father) is excluded by the presence of the latter,**

2. **an individual nearer in degree (proximity) to the deceased excludes the one who is remoter within the same class of heirs (son excludes all grandsons),**

3. **full blood excludes half-blood through father (so a full brother will exclude a consanguine brother but not a uterine brother)**

The majority view is that the full and consanguine brother is not excluded by the paternal grandfather. However, the Hanafi fiqh allows the paternal grandfather to totally exclude the agnatic siblings.

Heirs may also be prevented from inheriting by disqualification. The only two practical situations that are causes of disqualification are difference of religion and homicide.

The Prophet (SAWS) said, *"A Muslim cannot be the heir of a disbeliever, nor can a disbeliever be the heir of a Muslim."* (Sahih al-Bukhari)

Generally speaking, and this is also the majority view, a Muslim cannot inherit from a non-Muslim. Although the Hanafi fiqh does allow a Muslim to inherit from an apostate.

Allah's Messenger (SAWS) said, *"One who kills a man cannot inherit from him."* (Tirmidhi and Ibn Majah)

All the jurists agree that intentional or unjustifiable killing according to Sharia is a bar to inheritance because if such people are allowed to kill and then benefit from the estate of the victim, it will encourage incidents of homicide.

It should be noted that only relatives with a legitimate blood relationship to the deceased are entitled to inherit from the deceased under Islamic law. Thus, illegitimate children according to Islamic law and adopted children have no part in inheritance. Incidentally legal adoption as practised in the west is forbidden in Islam.

Under certain circumstances after allocation of the estate amongst all the heirs with fixed shares there is a residue left over but there are no residuaries. This residue called *al-radd* is returned to those sharers who are entitled to it, in proportion to their original shares. Conversely a situation may arise when the total sum of the assigned shares of the heirs with fixed shares is greater than unity. In this situation all the shares are abated proportionately by the doctrine of *al-awl* which involves decreasing the fractional shares to a common denominator, and increasing the denominator in order to make it equal to the sum of the numerators.

The amalgamation of the old customary agnatic law and the Quranic law has led to a number of problems which Muslim jurists have solved with great ingenuity. I shall mention one such case which occurred during the caliphate of Umar ibn Khattab (RA). A woman died leaving behind a husband, mother, two uterine brothers and two full brothers.

Umar ibn al-Khattab (RA) by systematically applying the rules gave the Quranic heirs their shares, husband (1/2), mother (1/6) and the two uterine brothers (1/3). The two full brothers acting as residuaries received nothing because there is no residue. The two full brothers, who would have been the sole heirs under the old customary agantic system, argued that even if their father was a donkey or a stone cast into the sea and they had no paternal relationship, they still had the same and equal relationship with the deceased as the uterine brothers through the same mother. Umar ibn al-Khattab (RA) reconsidered his ruling and allowed the full brothers to inherit equally with the

uterine brothers in the share of 1/3.

The reader will have noticed that uterine (or cognate) relatives have not figured in the discussion thus far. This group of potential heirs contains all those relatives who are neither Quranic sharers nor male agnates and constitute the largest group within the context of inheritance. They are referred to as *dhawu al-arham* (or distant kindred). The majority view is that they are entitled to inherit when there are no residuaries and no sharers entitled to *al-radd*. Only the traditional Maliki fiqh does not allow the distant kindred to inherit, any residue is given to the bait al-mal (public treasury). The rules of inheritance amongst the distant kindred are relatively complex and hence not mentioned here.

The Islamic laws of inheritance that have been discussed here can be legitimately accommodated and practically implemented within many existing western legislation systems by way of a valid will. In fact for those Muslims living in the west a will becomes an essential necessity to prevent intestate succession law of the land being applied to their estate after they die.

The will should comply with the law of the land so that it can be executed after a person's death without any unnecessary legal problems. Needless to say nothing in the will should be contrary to Sharia.

Sharia has placed two restrictions on the testator. Firstly, to whom he can bequeath his estate and secondly, the amount that he can bequeath. The majority view is that a bequest in excess of one-third of the net estate is invalid unless consented to by the legal heirs as is a bequest in favour of a legal heir.

Footnotes:

1. Rumsey, A. Moohummudan Law of Inheritance. (1880) Preface iii